

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON TRIBAL AFFAIRS**

March 30, 2021

8:17 a.m.

MEMBERS PRESENT

Representative Tiffany Zulkosky, Chair
Representative Dan Ortiz
Representative Zack Fields
Representative Mike Cronk

MEMBERS ABSENT

Representative Geran Tarr

COMMITTEE CALENDAR

HOUSE BILL NO. 123

"An Act providing for state recognition of federally recognized tribes; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 123

SHORT TITLE: STATE RECOGNITION OF TRIBES

SPONSOR(s): REPRESENTATIVE(s) ZULKOSKY

03/03/21	(H)	READ THE FIRST TIME - REFERRALS
03/03/21	(H)	TRB, STA
03/30/21	(H)	TRB AT 8:00 AM DAVIS 106

WITNESS REGISTER

LOGAN BASNER, Staff
Representative Tiffany Zulkosky
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 123 on behalf on
Representative Zulkosky, prime sponsor.

NATASHA SINGH
General Counsel
Tanana Chiefs Conference
Fairbanks, Alaska

POSITION STATEMENT: Presented during the hearing on HB 123.

JOY ANDERSON

General Counsel

Association of Village Counsel Presidents

Bethel, Alaska

POSITION STATEMENT: Presented during the hearing on HB 123.

ACTION NARRATIVE

[8:17:29 AM](#)

CHAIR TIFFANY ZULKOSKY called the House Special Committee on Tribal Affairs meeting to order at 8:17 a.m. Representatives Cronk, Ortiz, Fields and Zulkosky were present at the call to order.

HB 123-STATE RECOGNITION OF TRIBES

[8:18:13 AM](#)

CHAIR ZULKOSKY announced that the first order of business would be HOUSE BILL NO. 123, "An Act providing for state recognition of federally recognized tribes; and providing for an effective date."

[8:18:31 AM](#)

The committee took an at-ease from 8:18 a.m. to 8:19 a.m.

[During the at-ease, Chair Zulkosky passed the gavel to Representative Ortiz.]

[8:19:11 AM](#)

REPRESENTATIVE ZULKOSKY, as prime sponsor, introduced HB 123, which began as a bipartisan effort during the Thirty-First Alaska State Legislature and would be the first time that tribes were recognized under state law. Tribes had been recognized by the federal government, and by the executive and judicial branches of Alaska's government, but the Alaska State Legislature had yet to put forth in law formal recognition of tribes, she said. The passage of HB 123 would not change Alaska's relationship with tribes, as that was established under federal statute, she shared. The executive branch executed and implemented, and the judicial branch interpreted, policy, but the legislature created policy. The State of Alaska has looked

to tribes to help to provide services to those living in the most remote parts of the state, she said, from public safety and transportation to health care and economic development. In 2017, state and tribal partners entered the first-ever tribal compact, the Alaska Tribal Child Welfare Compact (ATCWC), and there have been ongoing conversations about pursuing compacting through education and other ways to expand the relationship with tribes, but it's difficult to talk about expanding relationships without having taken the first formal step in acknowledging tribes' existence, she pointed out. Particularly considering the role of tribal health during the COVID-19 pandemic, recognition is overdue, and is an opportunity that could help heal historical political divisions, she imparted.

[8:22:50 AM](#)

LOGAN BASNER, Staff, Representative Tiffany Zulkosky, Alaska State Legislature, presented the sectional analysis of HB 123 on behalf of Representative Zulkosky, prime sponsor. Section 1 added legislative finding and intent language, which was a bit unusual, but it was determined important to provide context for what is considered landmark legislation in the history of Alaska's relationship with its tribes, he said. Sections 2, 3, and 4 were mostly technical changes, he stated. Section 5 contained the proposed new statute which acknowledged the "unique" status tribes have with the federal government, which would make it the state's official policy that the state recognized the federally recognized tribes within the state of Alaska. The "heart" of HB 123 was the second sentence in Section 5, the list of federally recognized tribes, which is codified in the U.S. Code and this statute references that Act. This section makes clear that this recognition is in no way intended to affect the federal trust responsibility the U.S. Government extends to tribes nor is it an attempt to create a state trust responsibility to tribes, he put forth. Section 6 added an immediate effective date, he said. What HB 123 did not do was create any additional rights or privileges which tribes did not already have, he stated, including the building of casinos. Included in members' packets was a memo from the Alaska Oil and Gas Association stating HB 123 did not affect access to any natural resources.

[8:26:20 AM](#)

The committee took an at-ease from 8:26 a.m. to 8:28 a.m.

[8:28:50 AM](#)

NATASHA SINGH, General Counsel, Tanana Chiefs Conference, informed the committee she and Ms. Anderson were representing 93 tribes. She said tribes needed the authority of tribal recognition to fix the problems that plagued tribal communities. She shared tribes existed before the State of Alaska and before the United States (U.S.) Government. Tribes were embedded in a strict religious government, she imparted, based on a covenant of the air, the land, the water, and the animals, and tribal leaders implemented laws based on that covenant. The economy was based on a hunting and fishing lifestyle, she imparted, of which there were still remnants, but it was different having withstood colonialism and decades of oppression to the extent that nationhood needed a reemergence. She said HB 123 was a key to this reemergence. Native peoples and tribes have existed in the Americas from time immemorial, she stated, recognized in the Supreme Court under John v. Baker: "Before the coming of the Europeans, the tribes were self-governing sovereign political communities."

[8:34:25 AM](#)

MS. SINGH shared there were 574 tribes in the U.S., and 231 of those were in Alaska. If students had been given a proper education of U.S. history in high school, they would have learned "Federal Indian Policy Periods" showed in the timeline on slide 5 of her presentation: the Colonial Period, 1492 - 1820, here before the constitution and embedded therein; the Removal/Relocation Period, 1820 - 1850, including the "Trail of Tears" relocation of five civilized tribes to Oklahoma under President Andrew Jackson; the Reservation/Treaty Making Period, 1850 - 1887, where the U.S. Government entered into treaties with tribes; the Allotment & Assimilation Period, 1887 - 1934, which resulted in the creation of allotments in Alaska in 1936; and the Indian Self-Government Period, 1934 - 1953. She paused to explain there were so many different periods because none of them worked. In the Reservation/Treaty Making period tribes may have had too much power in their treaty making, so they were divided in Allotment/Assimilation, she offered. Indian Self-Government period was very paternalistic; Washington, D.C. telling tribes they knew what was best, even if the tribe was in, say, New Mexico and orders were being issued from Washington, D.C. Termination Era began in 1953 and went until 1967, when Self-Determination, or the notion that local people knew best how to govern themselves, began under President Richard Nixon. Self-Determination has been the only effective policy to date, she stated.

[8:39:16 AM](#)

REPRESENTATIVE FIELDS asked about the term "termination."

MS. SINGH replied the term referred to the termination of a tribe's legal status, some of which had been taken away. She offered the Little Shell Tribe of Montana, which had its legal status restored after having been taken away during termination.

[8:40:44 AM](#)

REPRESENTATIVE ORTIZ asked if termination was a final attempt on the part of the federal government to complete assimilation.

MS. SINGH replied yes, but in Alaska it didn't work. In Alaska high schools in the 1990s she was taught nothing about tribes or tribal governments, she shared.

REPRESENTATIVE ORTIZ asked if there were any geographic elements to the definition of tribes.

[8:43:25 AM](#)

JOY ANDERSON, General Counsel, Association of Village Counsel Presidents, replied no, tribes were governments subject only to the federal government and only in limited circumstances.

REPRESENTATIVE ORTIZ asked if tribes had unique cultural or language traits in the legal definition.

MS. SINGH replied not as part of the legal definition but going back to Little Shell Tribe as an example, when they were seeking recognition the Bureau of Indian Affairs did have a process for recognition, and tribes must prove ways to be recognized which included culture and language if they had been terminated and were seeking recognition. In Alaska, villages were recognized as governments in the 1990s and Congress codified it. She shared some tribes are very similar in language and culture but remain separate legal entities.

[8:46:54 AM](#)

REPRESENTATIVE CRONK commented children were not taught about the process of tribal government, but they should be.

[8:48:52 AM](#)

CHAIR ZULKOSKY asked whether the establishment and definition of tribes for some areas of the U.S. predated the constitution while others have been defined through recognition processes throughout the various policy periods.

MS. SINGH replied yes.

[8:49:33 AM](#)

REPRESENTATIVE FIELDS shared personal family history to illustrate history has been lost, even within his own family. He shared cultural genocide was described politely as assimilation. He said Alaska was on its way to doing a better job than has been done in his home in the Southeast U.S.

[8:51:17 AM](#)

MS. ANDERSON shared in 1831, during the Relocation/Removal Period, Chief Justice [John] Marshall coined the term "domestic-dependent nations," in which tribes were described as distinct independent communities under the control of the U.S. She shared a quotation from Justice Marshall on slide 6:

"...a weaker power does not surrender its independence - its right to self-government - by associating with a stronger and taking its protection. A weak state, to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state.

[8:56:01 AM](#)

MS. SINGH noted it was important tribes were in the Constitution under the Commerce Clause, as stated in the Marshall Trilogy; and, that Congress had plenary power over tribes. She reiterated the only policy which has worked thus far to make significant progress in reversing otherwise distressed social, cultural, and economic conditions in Native communities has been self-determination, a policy which reflected a political equilibrium for the past four decades, and which has withstood various shifts in the party control of Congress and the White House. She imparted in the first major piece of legislation, Public Law 93-638, the Indian Self-Determination Act of 1975, tribes identified federal government services they wished to

provide to their own tribal members and contracted for federal funding to provide the services themselves.

MS. SINGH put forth compacting with the Indian Health Service (IHS) is what has enabled the smooth vaccine rollout during the COVID-19 pandemic, she put forth. Tribes' relationship with the federal government benefits all Alaskans in this way, she stated. In 2000, there was an executive order which recognized tribes as domestic/dependent entities under its protection, and recognized tribes' right to self-governance, she stated, which is why tribes in Alaska needed to be consulted before regulations were written. Consultation policy has greatly improved the complex regulations, she said. She stated that denying tribes' existence as the status quo between the State of Alaska and tribes has been very detrimental.

[9:04:09 AM](#)

MS. ANDERSON brought forth the case Native Village of Stevens v. Alaska Management & Planning (1988), in which it had been stated tribes in Alaska did not exist, and Alaska Administrative Order No. 125, which stated the State of Alaska opposed expansion of tribal government powers and the creation of 'Indian Country' in Alaska.

[9:05:02 AM](#)

REPRESENTATIVE ORTIZ asked what the impact was of Stevens Village v. Alaska Management & Planning, specifically, what Stevens Village had been planning to do, that it were not able to do.

MS. ANDERSON replied that Stevens Village was not able to assert sovereign immunity; something to which all tribes were entitled unless they waived it.

REPRESENTATIVE ORTIZ asked what they were not able to accomplish specifically.

MS. SINGH replied that asserting immunity in court meant one could get out of court; therefore, waived immunity meant the business - in this case a contract dispute.

[9:09:05 AM](#)

MS. ANDERSON shared that in 1993, the "Sansonetti Opinion" formally disagreed with the Alaska Supreme Court's analysis,

concluding there were federally recognized tribes in Alaska, which was then confirmed by the list of federally recognized tribes issued by the U.S. Department of the Interior (DOI). The annually published list was also referenced in HB 123, she stated. In the case landmark case John v. Baker (1999), in which the case ruled for tribal jurisdiction over parent-to-parent disputes regarding child custody, the Alaska Supreme Court noted if Congress or the executive branch recognized a group of Native Americans as a sovereign tribe, the Supreme Court must do the same, she put forth. John v. Baker moved the State of Alaska 180 degrees from Stevens Village, she pointed out. In 2017, the Department of Law stated there were no unresolved legal questions regarding the legal status of Alaska tribes as federally recognized tribal governments, she stated.

[9:13:13 AM](#)

CHAIR ZULKOSKY asked about the State of Alaska suing its tribes more than any other state in the U.S., and what has contributed to the hostile position.

MS. ANDERSON replied that Alaska had lagged and was still operating in the mindset of the Termination Era, but that Alaska was getting better.

MS. SINGH added that the thought that tribes should "be done away with" had dominated state government as benefits to local tribal governments and the state had not been understood.

CHAIR ZULKOSKY asked whether contemporary examples of litigation against Alaska tribes by the State of Alaska were still available.

MS. SINGH replied yes, but HB 123 would see the Alaska State Legislature recognizing tribes, and expansion could happen from there.

[9:17:03 AM](#)

REPRESENTATIVE CRONK asked what was beneficial in John v. Baker.

MS. ANDERSON replied that custody cases must be resigned where they began; in the case of John v. Baker, the custody case began in tribal court, so the State of Alaska must recognize the verdict coming out of the tribal court.

MS. SINGH added that because of Alaska Native Claims Settlement Act, and tribes in Alaska being landless save Metlakatla, jurisdiction could be based on land, but that was just one component. In Alaska, jurisdiction was also based on government membership, including determining who comprised the tribal government.

[9:21:57 AM](#)

MS. ANDERSON reiterated that HB 123 would: bring the Alaska State Legislature in line with the other two branches of state government regarding the status of Alaska tribes; modernize the policy toward Alaska Native tribes by officially moving the Alaska State Legislature out of the Termination Era and into the Self-Determination Era; and create the potential for the State of Alaska to lead the country in the creation of state/tribal relations.

MS. SINGH added Alaska had the most tribes in the country, the most college-educated and the most traditional Native people in the country, and Alaskans had the potential to lead the country in terms of tribal/state relations. She mentioned again the COVID-19 vaccine rollout showed tribes' interest in serving the state and tackling issues together. In closing, she stated tribes were to be celebrated.

[HB 123 was held over.]

[9:28:03 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Tribal Affairs meeting was adjourned at 9:28 a.m.